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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,799	10/21/2003	Richard B. Jensen	41089-Simplot	5626

7590

02/17/2005

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EXAMINER

ALIE, GHASSEM

ART UNIT PAPER NUMBER

3724

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/690,799

Applicant(s)

JENSEN ET AL.

Examiner

Ghassem Alie

Art Unit

3724

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: _____

Allan N. Shoap

Supervisory Patent Examiner

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See the next page.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

Applicant's arguments filed on 02/07/05 have been fully considered but they are not persuasive. Applicant's arguments that Woodward in view of Galland does not teach that the rotary impeller has a throat wall defining an upward inlet throat for inflow passage of a succession of food product are not persuasive. Woodward has an impeller 43 and a plug prevention member 11 which is extending at least partially into the inlet of the impeller at a location disposed substantially off-axis relative to an axis of rotation of the impeller 43. Woodward does not teach that the impeller has a throat wall defining an upwardly open inlet throat. However, Galland teaches an impeller 22 having a throat wall 64 defining an upwardly open inlet throat for inflow passage of a succession of food products 12. See Fig. 1 and col. 5, lines 15-27 in Galland. The upwardly open inlet throat 64 rotates with the impeller 22. Therefore, it would have been obvious to a person of ordinary skill in the art to provide Woodward's impeller with the upwardly open inlet throat as taught by Galland in order to guide the falling food product into the impeller.

Applicant's argument that Woodward's chute 11 is not a plug prevention member is not persuasive. As discussed above, the chute 11 is defined as a plug prevention member since it allows only a certain number of potatoes enter into the impeller's cavity. The chute 11 naturally prevents many potatoes from falling into the cavity of the impeller at the same time. In addition, the use of a plug prevention member is well known in the art such as taught in Bruch and applied to claims 2-6 and 13-17.

Applicant's argument that Woodward's chute 11 cannot strike and dislodge potatoes that become stuck or trapped by centrifugal action against the rotating wall of the spinning impeller is not persuasive. Claims do not set forth that the plug prevention device strikes and dislodges the potatoes that become stuck or trapped by centrifugal action against the rotating wall of the spinning impeller. Claim 1, merely recites, "said rotary impeller being movable relative to said plug prevention member whereby food products lodged against said throat wall are carried by the impeller into impact engagement with said plug prevention member and thereby dislodged from the throat wall." Galland teaches all the limitations recited above. Applicant's argument that the chute 11 does not partially extend into any rotating inlet throat is not persuasive. Woodward in view of Galland teaches that the chute is extended partially into the rotating inlet throat of the impeller. See Fig. 2 in Galland.